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SENATE BILL 2873 By  
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HOUSE BILL 2723  
By Boyer

AN ACT to amend Tennessee Code Annotated, Title 35, Chapter 9, relative to the reformation of charitable remainder trusts.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 35, Chapter 9, is amended by adding the following language as a new, appropriately designated section, which shall read as follows:

(a) It is the purpose of this section to permit and authorize the reformation of certain inter vivos and testamentary charitable remainder trusts created prior to and after December 10, 1998, to comply with applicable federal tax regulations regarding qualifying payments to non-charitable beneficiaries. Such reformations shall be permitted and authorized upon the unanimous written consent of all living individual grantors, living individual beneficiaries, charitable remainder beneficiaries named or otherwise provided for in the trust agreement, and the trustee, with the concurrence of the attorney general and reporter. The attorney general and reporter shall perform such acts as, in the attorney general and reporter's opinion, will effectuate this declaration of purpose.

(b)(1) Notwithstanding any provision to the contrary in the governing instrument or in any other law of this state, the trustee of any charitable remainder trust described in Section 1.664-3(a)(1)(i)(b) of the Internal Revenue Code Regulations, as currently

adopted, or as may be subsequently amended, may, without application to any court and either before or after the funding of such trust, reform the trust to meet the definition of a charitable remainder unitrust described in Section 1.664-3(a)(1)(i)(c) of the Internal Revenue Code Regulations, as currently adopted, or as may be subsequently amended. In order to effectuate such reformation, the trustee shall obtain the written consent of all living grantors, living beneficiaries, charitable beneficiaries named or otherwise provided for in the trust agreement, and the trustee, together with the written concurrence of the attorney general and reporter. If the charitable beneficiary is to be determined by a person having discretion to select or name the charitable beneficiary at the time the trust terminates, the consent of such person shall be required. Consent shall not be required as to individual beneficiaries or grantors not living at the time of reformation or as to charitable remainder beneficiaries not named or not in existence at the time of such reformation.

(2) The possibility of beneficial interests arising after the reformation of the trust instrument shall not defeat the ability to reform the trust pursuant to this section. In the case of an individual beneficiary or grantor not competent to give consent, the consent of such beneficiary's or grantor's guardian or conservator, if any, or the consent of a guardian ad litem appointed by a court of competent jurisdiction, shall be treated as the consent of the beneficiary or grantor. A copy of the proposed reformation, executed by the trustee and consented to by all living grantors, living beneficiaries, and charitable beneficiaries named or otherwise provided for in the trust agreement, shall be delivered to the attorney general and reporter who shall, within thirty (30) days after receipt, either concur with the proposed reformation or state any specific objections to the proposed reformation, in writing delivered to the trustee by registered mail. If the attorney general and reporter state objections and those objections are not resolved to the attorney

general's and reporter's satisfaction or the attorney general and reporter do not withdraw the objections, the provisions of subdivision (b)(3) shall apply.

(3) In the event that all such living grantors, living beneficiaries, and charitable remainder beneficiaries do not consent to such reformation, any court of competent jurisdiction shall have the power to reform the governing instrument in accordance with subdivision (b)(1) upon petition by the trustee or any beneficiary. A copy of such petition shall be delivered in person or by registered mail to the attorney general and reporter.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.